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January 2007 Homeland Security Update

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House Democrats pledged that as one of their first acts in the majority, they would pass legislation that would fully implement the recommendations from the 9/11 Commission. In fulfilling that promise, the first bill of the 110th Congress was H.R. 1, the "Implementing the 9/11 Commission Recommendations Act." On January 9th, the bill passed 299-128. In the Senate, Homeland Security and Government Affairs Chairman Joseph Lieberman (I-CT) announced that his committee will hold hearings on the matter starting in late January and will introduce their own legislation by February. His committee is not expected to draft parallel legislation to H.R. 1, thereby setting up the need for a conference between the two bills. The following is a summary of the provisions of H.R. 1 that are relevant for local governments.

CURRENT HOMELAND SECURITY GRANT PROGRAMS

Distribution

The bill would change the distribution method for the State Homeland Security Grant Program (SHSGP) and the Local Law Enforcement Terrorism Prevention (LLETP) Program by lowering the minimum state award. Currently, each state receives a base award of .75% of the total annual appropriation for SHSGP, with the remainder distributed based on each state's risk profile. H.R. 1 would lower the minimum state award to 0.25% of the annual program appropriation, and provide a guarantee of 0.45% to states that have an international border or that abut a body of water with an international border. The remaining program funds would be distributed based on each state's risk profile. H.R. 1 would also codify the current distribution methods for the Urban Area Security Initiative (UASI).

The bill explicitly makes NO changes to the Assistance to Fire Fighters Grant Program (FIRE Act Grants), Staffing for Adequate Fire and Emergency Response (SAFER) Grant Program, and the Emergency Management Performance Grant (EMPG) Program.

Application Procedures/Eligibility

The bill contains provisions from the "Faster and Smarter Funding for First Responders Act" that was passed by the House in 109th Congress that would dramatically change the process by which state and local government apply for SHSGP, UASI, and LLETP. H.R. 1 would permit states, urban areas, regions (broadly defined), and tribal governments to apply for these programs. DHS would allow regions, urban areas, and states to compete under SHSGP, UASI, and LLETP. Given the history of these programs, should the Congress approve this provision of the House bill, it is likely that the Secretary would restrict SHSGP and LLETP to states (which would still

pass through 80% of their award to local governments). UASI would be the most heavily impacted of these programs because DHS would no longer pre-select which urban areas are eligible for funding. Rather, regions or states would apply to be designated and would be selected as part of a competitive process. Regions would be defined as conjoined areas of two or more local governments (or states) with at least 1.65 million residents and 20,000 square miles of land. They would also include any other conglomeration of units of local governments approved by the Secretary of Homeland Security and the governor of any state to which the component local governments belong. DHS would partially base award decisions on the extent to which a regional application was consistent with the state preparedness plan. The bill does not specify whether current or previous UASI designees would be grandfathered into the program. *Upon House passage of the Faster Smarter Funding for First Responder Act back in 2005, DHS did suggest that it would be willing to grandfather in current and previous UASI areas should the bill be enacted.* DHS is not commenting on whether they would make the same policy decision under H.R. 1. The bill requires DHS to award all grants no later than March 1st of each year.

Pass-Through Requirement

States would still have to pass at least 80% of the grant funds to local governments, First Responders or other eligible local groups, within 45 days. While states may petition for an extension beyond that period, failure to meet the requirement without an extension would result in a termination of direct federal-to-state payments. In such a case, DHS would make awards directly to local governments but in accordance with the approved spending plan for their state.

Use of Grants

Grant funds would not be used to supplant state or local funds, construct facilities, acquire land or cover state and local cost-sharing contributions. The bill does permit applicants to request departmental approval for using funds to reimburse costs associated with state and local government agencies carrying out duties that are usually performed by the federal government, but are being carried out by the local agency under an agreement with the relevant federal entity. Such activities would have to be directly related to homeland defense. The federal cost share would be 100% for the first two years, and 75% thereafter. The bill also mandates additional reporting requirements for applicants wishing to use grant funds to acquire equipment that does not meet current performance standards for First Responders. Awards under all the aforementioned programs would be prioritized based on the extent to which they would help reduce the threats of, vulnerabilities to, and consequences for persons and critical infrastructure.

INTEROPERABILITY GRANTS

The bill would establish a new stand-alone grant program to be called the Improve Communications for Emergency Response Grant Program. It would provide grants to states and regions (but not specifically or directly to local governments) to carry out initiatives to improve interoperable emergency communications. The measure permits the use of funds for various purposes, including communication planning, acquisition of communications equipment and system development, simulations, technical assistance and training. These grants could be used for solutions on a regional, statewide, national, or international basis. Under the bill, regions would be defined as combinations of contiguous local governments or non-contiguous local governments that share mutual aid agreements. There would be no minimum population requirement.

The measure authorizes such sums as may be necessary in the first fiscal year after certain criteria are met, including completion of a National Emergency Communications Plan, completion and submission of “baseline” operability and interoperability assessments, and a determination by DHS that there has been substantial progress made toward establishing emergency communications equipment and technology standards.

INTELLIGENCE & INFORMATION SHARING

FLEET Grants

The bill includes a new grant program, called the Fusion and Law Enforcement Education and Teaming (FLEET) Grant Program, to support the participation of tribal and local governments in “fusion centers.” (According to the DHS, fusion centers blend relevant law enforcement and intelligence information analysis and coordinate security measures in order to reduce threats in local communities.) Under the program, DHS, in consultation with the Justice Department, would provide grants to local and tribal law enforcement agencies to cover the costs associated with detailing personnel to participate in fusion centers.

Border Intelligence Fusion Center Program

The measure establishes a Border Intelligence Fusion Center Program through which DHS’ Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) would deploy their officers and intelligence analysts to fusion centers in border states to assist in producing border-related intelligence for law enforcement officials in the state. The bill provides funding through the program to hire CBP and ICE officers to replace those detailed to the fusion centers.

Homeland Security Advisories

The bill requires DHS to develop a new advisory system to provide the public with information regarding homeland security threats. It prohibits the system from using color designations as the exclusive means of providing information. Rather, DHS would make the scope of alerts specific to regions, locations or economic sectors. Alerts would also have to include information on protective measures that can be taken.

Information Sharing

The measure requires DHS to integrate its intelligence components into a department-wide “information sharing environment,” which would be administered by the Office of Intelligence and Analysis. Under the bill, information sharing and knowledge management officers would be designated for each component; department-wide procedures for reviewing and analyzing information provided by state, local and private-sector sources would be developed; and the office would be required to provide training and education opportunities. The measure also requires the development of a comprehensive information technology architecture that evolves or maintains existing systems and acquires new systems.

H.R. 1 also mandates the creation of the State, Local and Regional Fusion Center Initiative, which would foster partnerships between DHS and state, local and regional fusion centers. Through this program, DHS would provide operational and intelligence advice and assistance,

would support efforts to establish information sharing environments, would conduct training exercises and simulations, and would coordinate with other relevant agencies.

SECURING CRITICAL INFRASTRUCTURE

Critical Infrastructure Assessments

The bill requires DHS to conduct annual vulnerability assessments of the information about critical infrastructure available to the department, including the countermeasures proposed, recommended or directed for use to address security concerns. The assessment would be required to include the critical sectors outlined in Homeland Security Presidential Directive-7, which was a 2003 order that established a national policy for identifying and prioritizing key assets vulnerable to terrorist attacks. The bill also requires that annual reports be provided to Congress that summarize and review these assessments for the current and preceding two fiscal years.

Databases

The bill would require DHS to establish and maintain a National Asset Database in order to identify and prioritize critical infrastructure and other resources that need to be protected. It also requires the establishment of a second database within the National Asset Database called the National At-Risk Database, which would contain a list of the assets deemed at highest risk.

These databases would be required to be updated annually in order to remove assets that are described inaccurately or those that do not meet requirements and the department would be required to classify assets according to the critical sectors identified in Homeland Security Presidential Directive-7. In addition, the database would be required to be used in the development of plans and programs, and well as in providing certain departmental grants.